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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman

WILLIAM A. MUNDELL
Commissioner

JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

KRISTIN K. MAYES
Commissioner

Arizona Corporation Commission

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IN THE MATTER OF QWEST
CORPORATION'S FILING AMENDED
RENEWED PRICE REGULATION PLAN

Docket No: T-01051B-03-0454

IN THE MATTER OF THE INVESTIGATION
OF THE COST OF TELECOMMUNICATIONS
ACCESS

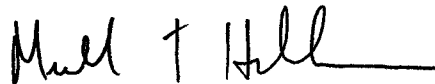
Docket No. T-00000D-00-0672

NOTICE OF FILING DIRECT TESTIMONY
ON BEHALF OF TIME WARNER TELECOM OF ARIZONA LLC

Time Warner Telecom of Arizona LLC hereby files the testimony of Timothy J.
Gates in the above-referenced matter.

1 RESPECTFULLY SUBMITTED this 18th day of November, 2004.

2 LEWIS AND ROCA

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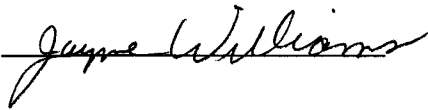
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

**MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES**

IN THE MATTER OF QWEST)	DOCKET NO. T-01051B-03-0454
CORPORATION'S FILING AMENDED)	
RENEWED PRICE REGULATION)	
PLAN.)	
)	
IN THE MATTER OF THE)	DOCKET NO. T-00000D-00-0672
INVESTIGATION OF THE COST OF)	
TELECOMMUNICATIONS ACCESS)	
)	

Direct Testimony Of Timothy J Gates

On Behalf of Time Warner Telecom of Arizona LLC

November 18, 2004

TABLE OF CONTENTS

Witness Introduction	1
Summary and Conclusions	3
The Inadequacy of Qwest's Filing	7
Qwest's Continued Market Dominance.....	7
Qwest's Inherent Market Advantages	10
The Danger of Unwarranted Additional Flexibility	20
Qwest's History of Pricing Flexibility Abuse	30

Witness Introduction

Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A. My name is Timothy J Gates. My business address is QSI Consulting, 819 Huntington Drive, Highlands Ranch, Colorado 80126.

Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH THE FIRM?

A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in traditional and non-traditional utility industries, econometric analysis and computer aided modeling. I currently serve as Senior Vice President.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. Since I received my Masters, I have taken additional graduate-level courses in statistics and econometrics. I have also attended numerous courses and seminars specific to the telecommunications industry, including both the NARUC Annual and NARUC Advanced Regulatory Studies Programs.

Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom, Inc. ("MWCOM"). I was employed by MCI and/or MWCOM for 15 years in various public policy positions. While at MWCOM I managed various functions, including tariffing, economic and financial analysis, competitive

1 analysis, witness training and MWCOM's use of external consultants. Prior to
2 joining MWCOM, I was employed as a Telephone Rate Analyst in the
3 Engineering Division at the Texas Public Utility Commission and earlier as an
4 Economic Analyst at the Oregon Public Utility Commission. I also worked at the
5 Bonneville Power Administration (United States Department of Energy) as a
6 Financial Analyst doing total electric use forecasts while I attended graduate
7 school. Prior to doing my graduate work, I worked for ten years as a reforestation
8 forester in the Pacific Northwest for multinational and government organizations.
9 Exhibit TJG-1, attached hereto to this testimony, is a summary of my work
10 experience and education.

11 **Q. HAVE YOU EVER TESTIFIED BEFORE THE ARIZONA**
12 **CORPORATION COMMISSION ("COMMISSION")**

13 A. Yes. I have testified in Arizona on numerous occasions. I have testified more
14 than 200 times in 44 states and filed comments with the FCC on various public
15 policy issues ranging from costing, pricing, local entry and universal service to
16 strategic planning, merger and network issues. As noted above, a list of
17 proceedings in which I have filed testimony or provided comments is attached
18 hereto as Exhibit TJG-1.

19 **Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

20 A. This testimony was prepared on behalf of Time Warner Telecom of Arizona
21 ("TWT"), a certificated competitive local exchange carrier ("CLEC") in Arizona.
22

Summary and Conclusions

Q. HAVE YOU REVIEWED QWEST'S FILING IN THIS PROCEEDING?

A. Yes. I have reviewed Qwest's filing. In this testimony, I focus my attention, primarily on the testimony of Qwest witnesses Mr. David L. Teitzel.

Q. AFTER REVIEWING THE TESTIMONY OF THESE QWEST WITNESSES, PLEASE SUMMARIZE YOUR CONCLUSIONS.

A. I have drawn the following conclusions after reviewing Qwest's case:

1. Qwest has failed to provide the information required by R14-2-1108 in its filing to demonstrate competitive classification and the need for additional regulatory freedom. Absent this evidence, the Commission would be placing the developing competitive market in Arizona in grave danger by granting Qwest additional pricing flexibility.
2. Qwest has overstated the extent to which it is subject to competition in Arizona. In so doing, Qwest has overstated its need for additional regulatory flexibility.
3. Qwest maintains dominance in Arizona. In addition, Qwest continues to benefit from its position as the monopoly provider of special access services, which allows it to realize monopoly profits and to control the strength and viability of its competitors. CLECs in Arizona can not compete on even terms with Qwest so long as these factors exist.
4. Qwest has understated the potential harm to the public interest of granting Qwest additional regulatory flexibility. Under Qwest's proposal, Qwest

1 could eliminate competitors from the marketplace in Arizona, thereby
2 depriving Arizona consumers of the benefits of competition.

3 5. Qwest's proposal would provide Qwest with the ability to engage in
4 pricing strategies that would make it economically impossible for CLECs
5 to remain in the marketplace. This ability, combined with Qwest's
6 incentive to maintain its monopoly market share, could devastate the
7 telecommunications market in Arizona.

8 **Q. PLEASE PROVIDE AN OVERVIEW OF YOUR PRELIMINARY**
9 **RECOMMENDATIONS TO THE COMMISSION.**

10 A. Time Warner is not, in principle, opposed to the concept of further deregulation
11 for Qwest when and if conditions merit the granting of additional freedom. After
12 all, regulation should be commensurate with market power. It should also be
13 made clear that Time Warner acknowledges the fact that competitive activity does
14 exist in Arizona. Nevertheless, Qwest continues to have significant advantages
15 over its competitors. The Commission's steadfast efforts with respect to creating
16 an environment in which some Arizona consumers have a choice of
17 telecommunications providers has been of tremendous benefit to the public
18 interest in the state. That being said, Qwest's proposals for additional regulatory
19 freedom are premature at this time, and continued vigilance on the Commission's
20 part is required in order to protect the competitive market that has begun to
21 develop in Arizona. More specifically, Qwest's proposals for additional
22 regulatory freedom should be conditional upon all of the following:

- 1 1. Qwest must bear the burden of demonstrating that additional regulatory
2 flexibility is appropriate. In so doing, Qwest must provide information
3 required of it in R14-2-1108 B. Qwest has failed to meet this burden in
4 this filing in that Qwest has completely ignored critical requirements of
5 which, at minimum, the Commission must consider in making a
6 determination that competitive classification is appropriate. This should
7 include a demonstration by Qwest that, based upon market power (as
8 required under R14 -2-1108 B. 6.), and market shares of Qwest and other
9 alternate providers (as required under R14 -2-1108 B. 3.), Qwest is no
10 longer the dominant carrier in Arizona, capable of exercising market
11 power to remonopolize the market. Qwest has failed to provide evidence
12 of this nature in its filing, and, therefore, has failed to comply with the
13 minimum requirements established by this Commission to demonstrate
14 sufficient competitive conditions.
- 15 2. Prior to Qwest being granted additional regulatory flexibility, subsidies
16 which currently flow to Qwest (and not to alternate carriers) must be
17 eliminated or made explicit and portable. For example, rates for special
18 access (a service that is critical to CLECs such as Time Warner, but which
19 is available solely from Qwest) must be reduced to cost. Absent the
20 implementation of this condition, Qwest would continue to have a
21 significant systemic competitive advantage over other carriers. This
22 existing advantage, coupled with additional regulatory freedom, would
23 have devastating results in Arizona's telecommunications market.

1 3. Prior to Qwest being granted additional regulatory flexibility, Qwest's
2 competitive advantages that are outside of this Commission's purview,
3 including Qwest's advantages in the area of franchise fees and access to
4 lucrative markets such as high-rise buildings must be eliminated.
5 Although these issues cannot be addressed directly by this Commission,
6 they represent true barriers to competition, and prevent CLECs from
7 competing "on par" in Arizona. The Commission should consider these
8 inherent market imperfections and Qwest's existing artificial advantages
9 in the context of Qwest's proposals, and until CLECs have the ability to
10 compete "on par" with Qwest, Qwest's proposals should be rejected.

11 4. The Commission must continue to actively monitor Qwest's market
12 behavior to ensure that Qwest does not engage in anti-competitive pricing
13 strategies. Qwest must commit to complying with a Commission-
14 established retail price floor that would prevent Qwest from setting retail
15 rates that are designed to squeeze alternative providers from the market.
16 Moreover, in order to ensure that such pricing strategies are not
17 implemented by Qwest, Qwest must submit proposed price changes to the
18 Commission for review prior to a change in rates.

19 It is critical that these conditions be met prior to granting Qwest additional
20 regulatory flexibility in Arizona. These conditions are critical in that they will
21 prevent Qwest from having the ability to act upon its existing incentive to –
22 through anti-competitive means – maintain its monopoly market dominance in
23 Arizona. Until these conditions are met, Qwest's proposal for additional

1 regulatory flexibility represent a true threat to the Arizona marketplace. I will
2 discuss these issues in detail in subsequent sections of my testimony.
3

4 **The Inadequacy of Qwest's Filing**

5 ***Qwest's Continued Market Dominance***

6
7 **Q. HAVE YOU REVIEWED THE TESTIMONY OF QWEST WITNESS**
8 **DAVID TEITZEL REGARDING THE TELECOMMUNICATIONS**
9 **LANDSCAPE IN ARIZONA?**

10 **A.** Yes. Mr. Teitzel presents testimony illustrating that there is some competitive
11 activity in Arizona. Time Warner does not dispute this point. Mr. Teitzel's
12 presentation, however, falls well short of providing the Commission with the
13 information needed to make a determination of a competitive telecommunications
14 service as required by R14-2-1108. Specifically, R14-2-1108 states, in part:

15 **R14-2-1108**

- 16 B. The petition for competitive classification shall set forth the conditions
17 within the relevant market that demonstrate that the
18 telecommunications service is competitive, providing, *at a minimum*,
19 the following information:
20 1. A description of the general economic conditions that exist which make
21 the relevant market for the service one that is competitive;
22 2. The number of alternative providers of the service;
23 3. *The estimated market share held by each alternative provider of the*
24 *service;*
25 4. The names and addresses of any alternative providers of the service that
26 are also affiliates of the telecommunications company, as defined in
27 R14-2-801;
28 5. The ability of alternative providers to make functionally equivalent or
29 substitute services readily available at competitive rates, terms, and
30 conditions; and

1 **6. Other indicators of market power, which may include growth and**
2 **shifts in market share, ease of entry and exit, and any affiliation**
3 **between and among alternative providers of the services.**
4 **(emphasis added).**
5

6 As I will discuss, Qwest's petition falls short of meeting at least two of these
7 requirements. As such, Qwest's filing is incomplete, and is insufficient for the
8 Commission to determine that Qwest should be granted any additional regulatory
9 flexibility.

10 **Q. PLEASE PROVIDE MORE SPECIFICS REGARDING HOW QWEST'S**
11 **PETITION FALLS SHORT OF PROVIDING THE COMMISSION WITH**
12 **SUFFICIENT INFORMATION TO FIND IN FAVOR OF QWEST.**

13 A. Testimony presented by Qwest fails to address at least two of the minimum
14 requirements set forth in Rule 14-2-1108 in that Qwest does not address the
15 relative market shares of carriers currently active in Arizona. In failing to address
16 this minimum requirement, Qwest has not only failed to comply with the
17 Commission's rule, but it has failed to provide the Commission with a valuable
18 tool with which it can determine extent to which Qwest continues to dominate the
19 market in Arizona. By examining Qwest's existing market share, in comparison
20 with the market shares of other market participants in the state, the Commission
21 would be able to gauge the extent to which Qwest dominates the market in
22 Arizona. Without this important information, it is not possible to determine that
23 Qwest lacks the market power to – given additional retail pricing flexibility –re-
24 monopolize the local exchange markets throughout Arizona.

25 **Q. DOES QWEST'S PETITION FALL SHORT IN ANY OTHER AREAS?**

1 A. Yes. Qwest's petition also falls short of meeting the minimum requirements
2 established in Rule 14-2-1108 in that – as is required by R14-2-1108 B. 6., Qwest
3 fails to address, among other things, shifts in market share, and the fact that the
4 future ease and entry and exit of the market is, to say the least, uncertain. This
5 uncertainty is the result of activities at the federal level surrounding the FCC's
6 Triennial Review Order¹ and related proceedings. As this Commission is
7 undoubtedly aware, these proceedings have cast doubt on the future availability of
8 some unbundled network elements ("UNEs") required by many CLECs to offer
9 competitive services. The possibility exists, that as a result of these proceedings,
10 competitive markets across the United States will be impacted negatively as
11 CLECs currently competing via a UNE-Platform ("UNE-P") strategy will no
12 longer have that option. Or, it may be that the terms under which UNE-P is
13 offered will change dramatically thereby changing the competitive landscape.
14 Under these conditions, market trends including market share and line losses
15 would almost certainly reverse in Qwest's favor, making the prospect of further
16 deregulation of Qwest an even more unpalatable option. Unless and until the
17 FCC and this Commission resolve these issues in such a way that does not further
18 increase Qwest's market power in Arizona, the Commission should delay
19 implementing any Qwest request for additional pricing flexibility.

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, ¶ 3 (rel. Aug. 21, 2003) ("Triennial Review Order" or "TRO").

1 **Q. ARE YOU SAYING THAT THE EVIDENCE QWEST HAS PRESENTED**
2 **IN USELESS TO THE COMMISSION?**

3 A. No. But it is clear that the Commission's Rule 14-2-1108 establishes a minimum
4 set of requirements with which telecommunications companies must comply in
5 order to petition for competitive classification. Qwest has only complied partially
6 with these requirements, and, as such, has provided some necessary information,
7 but has not provided sufficient information for the Commission to make a
8 determination.

9 **Q. WHAT ARE YOUR CONCLUSIONS WITH RESPECT TO THIS**
10 **SECTION OF YOUR TESTIMONY?**

11 A. Qwest must demonstrate that it lacks the market power that would give it the
12 ability to control prices in the market. Additionally, Qwest must demonstrate that
13 the ongoing changes related to the availability of unbundled network elements
14 will not adversely impact the competitive market in Arizona. Rule 14-2-1108 sets
15 forth requirements for Qwest to make these showings. Quite simply, therefore, in
16 order for Qwest to provide the evidence required in support of its petition, it needs
17 merely to comply with the Commission's established rule. Until Qwest has done
18 so, its petition should be rejected.

19 **Qwest's Inherent Market Advantages**

20
21 **Q. MR. TEITZEL TESTIFIES THAT QWEST IS SEEKING TO ADJUST**
22 **TERMS AND PRICES IN ARIZONA SO THAT QWEST CAN**

1 **“COMPETE ON PAR” IN THE STATE. PLEASE COMMENT ON THIS**
2 **TESTIMONY.²**

3 A. Mr. Teitzel’s testimony reflects Qwest’s desire for the removal of regulatory
4 restrictions and Commission oversight that prevents Qwest from using its
5 numerous artificial competitive advantages to maintain market dominance in
6 Arizona. It is critical that, in order to advance competition in Arizona, and to
7 maximize the benefits flowing to consumers from competition in the local
8 exchange market, Qwest and CLECs must truly be “on par” with one another. In
9 achieving that objective however, it is necessary to eliminate Qwest’s artificial
10 competitive advantages that would allow Qwest to maintain and increase its
11 market dominance in Arizona should such flexibility be granted. The competitive
12 realities in Arizona show that Qwest maintains significant artificial advantages
13 over CLECs in the state.

14 **Q. WHAT KIND OF ARTIFICIAL COMPETITIVE ADVANTAGES ARE**
15 **YOU TALKING ABOUT?**

16 A. Qwest maintains significant advantages in at least three areas, that, until
17 eliminated would permit Qwest to maintain and expand its dominance in the
18 Arizona local exchange market if Qwest had additional pricing flexibility. Those
19 areas are:

- 20 1. Qwest is the monopoly provider of special access services and benefits
21 from monopoly profits in providing special access services to its
22 competitors. Because Qwest is the sole provider of these services, which

² Direct Testimony of David L. Teitzel, page 3.

1 are necessary for CLECs to compete, Qwest is in the position of
2 controlling the strength and viability of its competitors, an obvious
3 competitive advantage.

4 2. Qwest enjoys unrestricted access to customers in lucrative business
5 markets that is unavailable to its competitors. This inequity represents a
6 significant competitive advantage to Qwest, and prevents CLECs from
7 "taking the next step" and offering facilities-based competitive
8 alternatives.

9 3. Qwest is not required to pay franchise fees in order to provide services in
10 many Arizona cities, whereas Qwest's competitors are subject to such
11 fees. This inequity also represents a significant competitive advantage to
12 Qwest.

13 **Q. PLEASE EXPLAIN WHY QWEST HAS A SIGNIFICANT ADVANTAGE**
14 **OVER CLECS STEMMING FROM SPECIAL ACCESS.**

15 A. Qwest is the sole provider of special access services to CLECs such as Time
16 Warner, who (because of circumstances discussed in greater detail below) are
17 often entirely dependent upon Qwest's provision of these services in order to offer
18 retail services to their own customers. As the monopoly provider of this critical
19 input, Qwest is in the position to control the strength and viability of its
20 competitors, simply by varying the rates it charges for special access. In short,
21 Qwest can decrease or eliminate its competitors' margins by increasing special
22 access rates, as it has done twice in the past year (discussed below). Obviously,
23 Qwest's ability to control the ultimate destiny of its own competitors puts CLECs

1 at a severe competitive disadvantage. Moreover, this situation would only be
2 exacerbated if Qwest was given the additional retail pricing flexibility it seeks in
3 this proceeding, as, as discussed below, additional retail pricing flexibility would
4 provide yet another avenue for Qwest to control its competitors' margins.

5 **Q. ARE THERE ADDITIONAL REASONS WHY QWEST'S SPECIAL**
6 **ACCESS RATES ARE A THREAT TO THE DEVELOPMENT AND**
7 **PRESERVATION OF COMPETITION IN ARIZONA?**

8 A. Absolutely. As the monopoly provider of special access, Qwest is the beneficiary
9 of supra-competitive, monopoly profits from the provision of special access
10 services. For example, based on the Qwest 2003 ARMIS Report 43-01, filed
11 April 1, 2004, Qwest was earning a rate of return on special access services of
12 68% for all fourteen states in Qwest's operating territory. Qwest's rate of return
13 on an Arizona-specific basis was reported to be an incredible 74%.³ Not only
14 does Qwest collect these profits – a significant advantage in and of itself – but
15 Qwest extracts these revenues directly from its competitors – the very carriers
16 who would, theoretically, provide the competitive market discipline to prevent
17 Qwest from abusing the additional regulatory freedom it seeks in this proceeding.
18 In other words, Qwest argues that competition in Arizona is sufficiently
19 developed that, in some instances, regulatory oversight is no longer required.
20 However, given its advantage with respect to special access, Qwest is in the
21 position to dictate the extent to which other carriers can exert competitive
22 pressures necessary to discipline Qwest's retail pricing practices. Which means,

³ Source: Qwest AZ ARMIS 43-01 2003 rows 1915/1910.

1 unfortunately, that competitors cannot exert sufficient market discipline to control
2 Qwest's activities in the market place. As such, curtailing existing regulatory
3 oversight would provide Qwest with the long term ability to set retail rates in
4 Arizona at levels as high as it wishes without fear of competitive response. For
5 Qwest to "compete on par" with other carriers in Arizona, Qwest's persisting
6 monopolies and Qwest's ability to control the financial strength of its competitors
7 must be eliminated.

8 **Q. IS THERE ANYTHING ABOUT QWEST'S EXORBITANT PROFITS ON**
9 **SPECIAL ACCESS ABOUT WHICH THE COMMISSION SHOULD BE**
10 **PARTICULARLY CONCERNED?**

11 A. Absolutely, the Commission is no doubt aware of the uncertainty surrounding the
12 continued availability of UNEs for CLECs to provide service to end-use
13 customers. ILECs have suggested that rather than relying upon UNEs, CLECs
14 could use special access in order to serve customers. Incredibly, this suggestion
15 comes while Qwest is experiencing 74% returns on special access, and continues
16 to seek higher and higher rates. Obviously, if the availability of UNEs is to be
17 diminished, for special access to be a viable alternative, the rates for special
18 access will have to be decreased to cost-based levels. Absent that, the price of
19 obtaining the wholesale services needed to compete will likely be higher than the
20 retail rate at which services can be sold.

21 **Q. CAN YOU DESCRIBE QWEST'S COMPETITIVE ADVANTAGE OVER**
22 **CLECS IN THE LOCAL EXCHANGE MARKET STEMMING FROM**
23 **FRANCHISE FEES?**

1 A. Yes. Many CLECs such as Time Warner are required to pay franchise fees in
2 order to operate in Arizona and elsewhere. It is my understanding that Qwest has
3 historically, and successfully argued that due to its presence in the region prior to
4 Arizona being granted statehood, it is not subject to such fees.⁴ Therefore, this
5 tax to which, for the most part, Qwest is not subject, is an added cost of doing
6 business in Arizona uniquely assessed upon CLECs, and constitutes a competitive
7 penalty to alternate carriers seeking to compete with Qwest. In addition to these
8 penalizing fees, CLECs are often required to provide “in-kind” service to
9 governmental agencies in exchange for franchise rights. This is an additional cost
10 to which Qwest is not subject, and, which represents a further “tilting” of the
11 competitive playing field in Arizona.

12 **Q. ARE THESE FRANCHISE FEES SIGNIFICANT IN TERMS OF COST TO**
13 **CLECS?**

14 A. Absolutely. Franchise fees are typically collected by cities on a quarterly basis,
15 and can represent as much as 5% of a CLEC’s gross revenues. Therefore, in
16 addition to Qwest’s other inherent advantages in the marketplace, Qwest benefits
17 from the additional advantage of being exempt from fees that must be paid by its
18 competitors. In essence, even if it was assumed that all else was equal, CLECs,
19 by virtue of these franchise fees faces a higher cost of doing business than does
20 Qwest. Until this inequity is eliminated, CLECs can not compete “on par” in
21 Arizona with Qwest.

⁴ A.R.S Section 9-582(E) embodies this concept.

1 **Q. PLEASE DISCUSS QWEST'S COMPETITIVE ADVANTAGE AS IT**
2 **RELATES TO ACCESS TO CUSTOMERS.**

3 A. One fundamental requirement of a competitive market is that new firms have the
4 ability to enter the market without significant barriers. This fundamental
5 requirement is not currently met in Arizona, and moreover, Qwest has a
6 significant advantage over CLECs with respect to accessing entire segments of
7 the market. This is because, in many cases, owners and / or landlords of high rise
8 buildings give preferential treatment to Qwest in terms of tenant (also potential
9 telecommunications service customer) access. This competitive advantage can
10 come from landlords charging CLECs such as Time Warner a fee to access
11 customers or even from landlords denying CLECs any access to customers
12 whatsoever. Once again, this limitation is unique to CLECs who are trying to do
13 business in Arizona – Qwest is not hindered by this constraint.

14 **Q. CAN YOU PROVIDE THE COMMISSION WITH SPECIFIC EXAMPLES**
15 **OF HOW THIS INEQUITY DISRUPTS THE MARKETPLACE, AND**
16 **INHIBITS THE DEVELOPMENT OF EFFECTIVE COMPETITION IN**
17 **ARIZONA?**

18 A. Time Warner has experienced multiple instances in which it has either been
19 denied access to customers or faced significant fees (that Qwest does not have to
20 pay) for such access which make locating equipment and serving customers
21 uneconomic. One such example involves Time Warner's attempt to serve its
22 customers in two large towers in downtown Phoenix.⁵ Based on conversations

⁵ 2901 and 2999 North Central Avenue, Phoenix, AZ.

1 with the Time Warner local vice president, Time Warner was, at first denied
2 access to these buildings entirely, and, only after several months, and in response
3 to a letter from one of the buildings largest tenants, specifically requesting that
4 Time Warner be allowed to bring fiber into the building did the building owner
5 even consider allowing such access. Even then, Time Warner would not have
6 been allowed to place its equipment in the space set aside for such equipment, but
7 would have been required to lease (at extremely high rates) a private suite to
8 house its equipment. The fees that Time Warner would have had to pay to the
9 building owner (and to which, Qwest is not subject) made serving its own
10 customers on a facilities basis uneconomic. According to the Time Warner local
11 vice president, it is not uncommon for Time Warner to experience roadblocks of
12 this nature when seeking to serve customers with its own facilities. Clearly, Time
13 Warner does not enjoy the same access to the marketplace that Qwest does.
14 Under these existing conditions, CLECs can not compete "on par" with Qwest.

15 **Q. IF TIME WARNER DOES NOT HAVE ACCESS TO CERTAIN SECTORS**
16 **OF THE MARKET AS YOU DESCRIBED IN THE PREVIOUS**
17 **EXAMPLE, HOW DO THEY SERVE CUSTOMERS IN THOSE**
18 **LOCATIONS?**

19 **A.** When Time Warner is denied the opportunity to use its own facilities to serve its
20 customers, it must rely upon Qwest to provide those underlying facilities.
21 Therefore, in instances such as the one described above, Time Warner is forced to
22 purchase special access from Qwest in order to reach its customers. This
23 arrangement places Time Warner in a very precarious position, as Time Warner

1 must rely entirely upon Qwest to provide the underlying facilities it uses to serve
2 its customers. As the monopoly provider of those underlying facilities, Qwest is
3 in the position to control the strength and viability of its competitor (Time Warner
4 in this case) because Qwest can increase Time Warner's costs (thereby decreasing
5 or even eliminating Time Warner's margins) by increasing special access rates.

6 **Q. HOW DOES THIS LIMITATION IMPACT THE DEVELOPMENT OF**
7 **EFFECTIVE COMPETITION IN ARIZONA?**

8 A. It can be argued that truly effective competition can only occur when CLECs
9 compete on a facilities basis. Other competitive options such as resale and UNE
10 competition are critical to the development of competition, in terms of providing
11 CLECs with a viable mechanism by which to enter and gain a toehold in the
12 marketplace. However, these forms of competition are subject to the problems I
13 discussed previously, specifically, reselling CLECs, and CLECs competing via
14 UNEs are vulnerable to Qwest in that Qwest can control the strength and viability
15 of its competitors. As long as CLECs are denied the ability to compete with
16 Qwest using their own facilities, a truly competitive market will not develop in
17 Arizona.

18 **Q. YOU HAVE PROVIDED THREE EXAMPLES OF HOW EXISTING**
19 **COMPETITIVE REALITIES INHIBIT THE ABILITY OF QWEST TO**
20 **COMPETE ON PAR WITH QUEST. HOW CAN THE ARIZONA**
21 **COMMISSION MITIGATE THESE PROBLEMS?**

22 A. To my knowledge, these issues fall outside of the Commission's direct
23 jurisdiction. For example, the Commission is powerless to regulate interstate

1 special access rates, as they fall under federal jurisdiction and likewise, powerless
2 to regulate how and if franchise fees are levied, or the actions of building owners
3 with respect to how and if they permit CLECs to serve a building's tenants.
4 Nevertheless, it is critical that the Commission consider these exogenous factors
5 as it considers Qwest's proposals in this proceeding.

6 **Q. IF THE COMMISSION CAN NOT CONTROL THESE EXOGENOUS**
7 **FACTORS, WHY ARE YOU DISCUSSING THEM IN YOUR**
8 **TESTIMONY?**

9 A. Because it is critical for the Commission to account for any and all influences on
10 the competitive environment in Arizona (whether they are under the
11 Commission's jurisdiction or not) prior to granting Qwest additional pricing
12 flexibility. Qwest characterizes its proposals in this proceeding as merely
13 providing it with the opportunity to compete "on par" in Arizona. While the
14 issues I raise here are not something the Commission can "fix", the Commission
15 must be cognizant of them, as they significantly impact the competitive
16 environment in the state, dramatically tilting the playing field in favor of Qwest.
17 Unless and until these situations are resolved, and CLECs can compete in Arizona
18 in a manner that is "on par" with Qwest, any additional regulatory flexibility for
19 Qwest would be premature, and only exacerbate the problems I have identified in
20 this testimony. Moreover, failing to account for these additional exogenous
21 factors would jeopardize the continued development of the market in the state,
22 and would likely reverse the progress that has been made to date. I will discuss

1 the negative impacts of granting Qwest additional pricing flexibility in the next
2 section of my testimony.

3 **Q. PLEASE SUMMARIZE THIS SECTION OF YOUR TESTIMONY?**

4 A. Qwest is the beneficiary of supra-competitive profits from special access that are
5 not subject to competition. These monopoly profits and Qwest's current status as
6 the monopoly provider provide Qwest with a significant (but artificial)
7 competitive advantage. Also, Qwest profits from competitive advantages related
8 to franchise fees and access to entire segments of the market to which its
9 competitors are excluded. While Time Warner recognizes that some competitive
10 activity is indeed present in Arizona, and, as discussed previously, is not opposed,
11 in principle, to additional deregulation, such deregulation must be preceded, or be
12 simultaneous with, the elimination of Qwest's existing market advantages. It is
13 only through such elimination that Qwest would truly be "on par" with the
14 CLECs in the state. Until such a time, as these inherent inequities are eliminated,
15 Qwest's proposal for additional regulatory flexibility should be denied.

16 **The Danger of Unwarranted Additional Flexibility**

17
18 **Q. IN THE PREVIOUS SECTION, YOU PROVIDED EVIDENCE THAT**
19 **QWEST HAS SIGNIFICANT COMPETITIVE ADVANTAGES OVER ITS**
20 **RIVALS. GIVEN THESE ADVANTAGES, WHAT SHOULD THE**
21 **COMMISSION EXPECT IF QWEST IS GRANTED ADDITIONAL RETAIL**
22 **PRICING FLEXIBILITY?**

23 A. Given these advantages, if granted additional pricing flexibility, Qwest would have

1 the ability to engage in anti-competitive pricing strategies which would make it
2 possible for Qwest to drive its competitors from the market, or at a minimum,
3 severely impede the development of nascent competition. All carriers, including
4 Qwest, have the incentive to increase market share, and to win back customers lost
5 to competitors. The danger of granting further regulatory flexibility to Qwest at this
6 time is that Qwest would not only have the incentive to retake the market, it would
7 have the ability to do so – using anti-competitive means.

8 **Q. WHAT SORT OF PRICING TACTICS BY QWEST SHOULD THE**
9 **COMMISSION BE CONCERNED ABOUT?**

10 A. In general, given Qwest's market position, there are two forms of pricing strategies
11 that should concern the Commission in the event of further deregulation. Absent
12 existing restrictions, Qwest could do either or both of the following:

- 13 (1) *Increase* its wholesale and/or retail rates and earn supra-normal profits at the
14 expense of ratepayers and/or wholesale customers; and/or,
15
16 (2) *Lower* its retail rates below a relevant price floor in select circumstances to
17 drive competitors from the market.⁶
18

19 It is important to note that these two pricing strategies are not mutually
20 exclusive. To the contrary, the two strategies are most effective for Qwest if they
21 are executed simultaneously. In that manner, Qwest would be able to fend off
22 competitors by selectively lowering rates for certain services in the pockets where it
23 faces some competition and/or it knows that CLECs have facilities, while remaining
24 optimally profitable by raising rates for customers not subject to competition (like

⁶ Once the incumbent has defeated its competitors through anticompetitive pricing, it will be able to raise its retail rates to the detriment of ratepayers.

1 special access customers). This is of particular concern in Arizona given the fact
2 that competitive activity is not pervasive throughout the State and CLEC facilities
3 are not ubiquitous.

4 **Q. PLEASE EXPLAIN HOW QWEST COULD ELIMINATE COMPETITION**
5 **ENTIRELY USING ANTICOMPETITIVE PRICING TACTICS.**

6 A. If the Commission chooses to deregulate certain exchanges in Arizona, absent
7 *appropriate* price floor restrictions, Qwest would have the ability to price local
8 exchange service in such a way that it would be impossible for competitive carriers
9 to respond profitably. Under these conditions, competitors would have a
10 disincentive to enter or remain in the market, and the very CLEC presence that can
11 prevent market manipulation when/if effective competition is present would not be
12 sustainable. Qwest can accomplish this objective by engaging in classic price
13 squeeze tactics.

14 **Q. PLEASE DEFINE AND DISCUSS THE CONCEPT OF A PRICE SQUEEZE.**

15 A. A price squeeze is created when a vertically integrated firm (such as Qwest) has
16 unrestrained retail pricing freedom to compete against companies (such as CLECs)
17 in retail markets while controlling critical inputs upon which its competitors are
18 dependent (such as special access services and/or UNEs). In this situation, the
19 vertically integrated firm can use the price squeeze as an anticompetitive device by
20 lowering the price for the retail service to or below the price which it charges for the
21 wholesale elements necessary for competitors to compete, thus squeezing the
22 dependent competitors' margins between retail rates and wholesale rates, and

1 reducing or eliminating their ability to recover their costs. This strategy is called a
2 price squeeze and can more formally be defined as follows:

3 Considering a situation in which a monopoly supplier is integrated
4 downstream, a price squeeze [is] the situation in which "the
5 monopoly input supplier charges a price for the input to its
6 downstream competitors that is so high they *cannot profitably* sell
7 the downstream product in competition with the integrated firm"⁷
8 (Emphasis added.)
9

10 The FCC discusses the price-squeeze strategy and notes that it occurs when a
11 dominant firm with downstream competitors that rely on facilities and services from
12 the dominant firm is "charging prices for inputs that preclude[] competition from
13 firms relying on those inputs."⁸ The upshot of a price squeeze is that competitors
14 would have to pay more to their wholesale provider (Qwest) than they can charge to
15 their retail customers, thereby losing money on every customer.

16 **Q. CAN YOU PROVIDE AN EXAMPLE OF HOW QWEST COULD**
17 **EXECUTE A PRICE SQUEEZE BY MANIPULATING RETAIL PRICES**
18 **IN A DEREGULATED ENVIRONMENT?**

19 A. The table below provides a simple example of how Qwest could execute a price
20 squeeze in Arizona using the retail pricing freedom it would have absent appropriate
21 price floor standards. By setting its retail prices at levels that are lower than the
22 levels at which its wholesale inputs which are required by CLECs to provide the
23 service are priced, Qwest could put competitors in an extremely difficult position in

⁷ Jean Tirole, "The Theory of Industrial Organization," The MIT Press, Cambridge, Massachusetts, 1988, page 186. Tirole quotes from Joskow, P. 1985. Mixing Regulatory and Antitrust Policies in the Electric Power Industry: The Price Squeeze and Retail Market Competition. In "Antitrust and Regulation: Essays in Memory of John J. McGowan," ed. F. Fisher. City: Publisher.

⁸ *Sprint v. FCC*, 274 F.3d 549, 551 (2001).

1 which the CLEC would be faced with one of two options: (1) price its retail service
2 to end-users at levels higher than Qwest (significantly reducing the opportunity for
3 attracting new customers and likely losing existing customers), or (2) set prices at a
4 level which would be competitive with Qwest, but would not recover the costs of
5 providing the service (taking a loss on each existing and/or new customer).
6 Obviously, neither option would be attractive to any CLEC and would have a
7 devastating effect on current competition in Arizona.

8
9 **PRICE SQUEEZE EXAMPLE**

QWEST WHOLESALE INPUT PRICE	QWEST RETAIL PRICE	CLEC LOSS
\$15	\$12	-\$3

10
11 In this manner, Qwest could squeeze competitors out of the marketplace and
12 eliminate any and all competition by simply setting prices at levels that do not
13 recover the CLEC costs of offering the service.

14 **Q. CAN YOU EXPLAIN IN MORE DETAIL THE PRICE SQUEEZE TACTIC**
15 **THAT CONCERNS YOU?**

16 **A.** Yes. In simple terms, most CLECs live or die by the margins between the rates for
17 the wholesale inputs and their retail rates. That margin must cover the CLECs' own
18 costs and provide a return on investment, if the CLECs are ever to become effective
19 competitors. The larger the margin between the wholesale rates CLECs pay to
20 Qwest and the retail rates they can charge in the marketplace, the larger will be their
21 profits – if any – or the smaller will be their losses. If that margin shrinks (or is

1 eliminated), so will the CLECs' ability to operate in Arizona. Thus, in the absence
2 of a price floor, Qwest will be able -- at will -- to increase or decrease the margin
3 available to their dependent competitors. As such, Qwest is largely in control of the
4 strength and viability of its competitors, which -- coming full circle -- are the very
5 companies that are needed to provide pricing discipline on a going-forward basis.

6 **Q. DO YOU HAVE SPECIFIC EXAMPLES FOR THE COMMISSION TO**
7 **CONSIDER?**

8 A. Yes. Regulators in other states have begun to see the negative effects of granting
9 pricing flexibility prematurely. These concerns were detailed in a recent Wall Street
10 Journal article in which the problems associated with ILECs setting retail rates at
11 price squeeze levels was discussed (Exhibit TJG 2). One example cited in this
12 article illustrates that SBC is offering a retail rate for a limited time of \$11.95, while
13 the wholesale rates charged to competitors is \$13.67. This differential between retail
14 and wholesale rates puts CLECs "in the hole" \$1.72 per month, plus the costs to the
15 CLEC associated with retailing the service. Clearly, the pricing strategy employed
16 by SBC is designed to totally eliminate the CLECs' profit, and to drive them out of
17 business. Qwest's proposal, if granted would allow Qwest to engage in the same
18 type of pricing in Arizona.

19 **Q. DOES IT MITIGATE YOUR CONCERN SINCE THE BELOW COST**
20 **RETAIL PRICE IS FOR A LIMITED TIME PERIOD?**

21 A. No, in fact, if retail prices were set at these levels permanently, it would not be
22 reasonable to argue that such pricing was not a benefit to retail customers. However,
23 the below cost pricing strategy is limited in order to price potential competitors out

1 of the market. Once those competitors are eliminated, (and any actions taken by the
2 Commission to re-regulate are too late) ILECs are free to increase rates to much
3 higher levels, more than recouping the reduced profits realized during the short term.

4 **Q. WOULDN'T CLECS COMPETING VIA RESALE BE INSULATED FROM**
5 **A QWEST PRICE SQUEEZE?**

6 A. Before answering that question, I think it is necessary to briefly comment on the
7 concept of "resale competition" in general. As the Commission is aware, reselling
8 CLECs are limited to providing only the services Qwest provides. As such, it is
9 impossible for the CLEC to differentiate its product from Qwest, a situation that
10 would not be expected in a truly competitive environment. Additionally, since
11 reselling CLECs obtain the Qwest service on a discounted wholesale basis (with the
12 discount reflecting Qwest's retailing costs), the only price competition that can occur
13 is limited to retail activities (i.e., resellers have to be more efficient at the retailing
14 business than Qwest in order to gain a cost advantage over Qwest in order to offer
15 Qwest's resold service at relatively attractive rates). Therefore, price competition is
16 also limited. Although resale has been an important entry vehicle in the initial stages
17 of the development of a competitive local exchange market across the country, its
18 attractiveness as a means of competing with ILECs has been dramatically reduced
19 recently. This is due to the fact that, as discussed above, resale is a less effective
20 means of competition than either UNE or facilities based competition.

21 To respond directly to the question regarding whether resale CLECs are
22 insulated from a Qwest price squeeze, the answer is "no". Resale CLECs would still
23 be at risk from a Qwest price squeeze if Qwest had additional pricing flexibility

1 because, as mentioned previously, such CLECs must recover not only the wholesale
2 cost of providing the service (paid directly to Qwest), but also all associated retailing
3 costs. ILECs often try to mitigate other parties' price squeeze arguments by noting
4 that they (ILECs) cannot price below a reselling competitor's cost because the
5 reselling competitors costs are discounted from the ILEC retail price. This argument
6 does not hold water, as illustrated in the following example:

7 Assume that reselling CLEC (selling services to business customers) can
8 purchase resale services from Qwest at a discount (18% in Arizona). Further
9 assume that the Qwest retail rate against which the CLEC competes is \$25/month.
10 Under these conditions, the CLEC can set a rate of \$24.50, thereby allowing it to
11 "win" customers from Qwest, pay Qwest ($\$25 \times 82\% = \20.50), recover its retail-
12 related costs (assumed to be \$4), and maintain a margin of \$0.50. Now, assume that
13 Qwest is granted additional pricing flexibility, and with that ability reduces its retail
14 rate to \$20. The CLEC must still recover \$4 in retailing expenses and must still pay
15 Qwest ($\$20 \times 82\% = \16.40). In order to just break even, the CLEC must set a retail
16 price of $\$16.40 + \$4 = \$20.40$. This retail price would not be attractive when
17 compared to Qwest's offered price of \$20, and the CLEC would begin to lose
18 customers. If the CLEC elected to "compete" with Qwest and price its resold
19 services at \$20, it would lose \$0.40 per customer per month. As is always the case
20 when faced with a price squeeze, the reselling CLECs choices are therefore either to
21 lose customers or lose money. Obviously, given those options, the CLEC would
22 choose to exit the market.

23 **Q. WOULDN'T RETAIL PRICE REDUCTIONS BY QWEST BE A BENEFIT**

TO CONSUMERS?

A. In the short term, the answer is obviously “yes.” However, after competing firms have been driven from the marketplace as discussed above, Qwest would no longer be constrained by competitive pressure from raising prices to levels well in excess of cost. In other words, once the price squeeze has successfully eliminated competitors, Qwest could freely increase prices to monopoly-profit-maximizing levels without any threat of a competitive response. In the long run, consumers would therefore not experience prices that are competitively driven. Rather, absent a reasonable price floor, customers could expect to experience prices well in excess of cost, and (since alternative providers have exited the market) have no alternative but to pay those prices. Even in the short term, these pricing tactics would not likely provide widespread benefits to customers in Arizona because the temporary price reductions would likely be limited to the CLEC’s largest customers that Qwest is most interested in winning back. In short, although a pricing strategy that includes reductions in retail rates appears on its face to be appealing from a consumer perspective, in actuality, such a scheme will result in higher, not lower, rates, and in substantially narrower choices of providers and services for consumers.

Q. HOW CAN THE COMMISSION PREVENT THESE NEGATIVE CUSTOMER AND MARKET IMPACTS?

A. In the event that the Commission determines that it is appropriate to deregulate services in certain Arizona exchanges, I recommend that the Commission impose a price floor, below which Qwest would not be allowed to set retail rates. The price floor should include, at a minimum, the following two cost components:

1 (1) *Imputed costs of all the UNEs and/or services used by CLECs to*
2 *provide the service.*

3 For example, because Time Warner relies upon special access
4 services (provided solely by Qwest) in order to provide retail services
5 to end use customers, their associated costs must be recovered.
6

7 (2) *A measure of minimum retail related costs.*

8 An appropriate proxy for these retail costs could be established by
9 using the Commission approved percentage for resale discounts. The
10 Commission should recall that the resale discount is calculated based
11 on Qwest's retail related expenses.
12

13 Additionally, I recommend that the review of prices be done by the
14 Commission before-the-fact, i.e., *prior* to the new price becoming effective. By
15 implementing this before-the-fact review the Commission can ensure that anti-
16 competitive or predatory pricing does not impact the market.

17 **Q. ISN'T QWEST ALREADY SUBJECT TO A PRICE FLOOR IN ARIZONA?**

18 A. Yes. According to Commission Rule R14-2-1310 C., incumbent local exchange
19 carriers are required to recover TSLRIC costs in the price of retail services. It is my
20 understanding that the Commission was to establish rules in order to implement
21 these price floors, but that that has yet to occur.⁹

22 **Q. IS A TSLRIC PRICE FLOOR ADEQUATE TO PREVENT THE ANTI-**
23 **COMPETITIVE BEHAVIOR YOU DESCRIBE ABOVE?**

24 A. No. TSLRIC does not allow carriers to recover all costs. If prices are offered by
25 Qwest at TSLRIC (or lower), CLECs are not likely to offer services, and would
26 likely leave the market. This contention is supported by Qwest in its testimony in
27 this proceeding. Qwest witness Teresa K. Million states in her direct testimony that
28 TSLRIC costs "do not by themselves define the appropriate price level", and further,

⁹ ACC Decision No. 63487—March 30, 2001

1 that carriers must recover costs in addition to TSLRIC in order to “remain a healthy,
2 viable and growing corporation that can continue to invest in new products and
3 services.” She goes on to say that if firms do not recover such costs, “the products
4 are not likely to be offered by the firm.”¹⁰

5 In short, and apparently Qwest would agree, a TSLRIC price floor is too low
6 to prevent anti-competitive behavior, since it would be impossible for a competing
7 carrier to be viable if it was forced to compete if Qwest offers rates at or below
8 TSLRIC.

10 **Qwest’s History of Pricing Flexibility Abuse**

11
12 **Q. YOU HAVE RECOMMENDED THAT THE COMMISSION PLACE**
13 **RESTRICTIVE CONDITIONS ON QWEST RECEIVING ADDITIONAL**
14 **PRICING FLEXIBILITY, AND THAT SUCH TREATMENT IS**
15 **PREMATURE AT THIS TIME GIVEN CURRENT COMPETITIVE**
16 **REALITIES IN ARIZONA. CAN YOU PROVIDE THE COMMISSION**
17 **WITH AN ARIZONA-SPECIFIC EXAMPLE OF HOW QWEST HAS**
18 **RECEIVED REGULATORY FLEXIBILITY IN THE PAST, AND IN**
19 **WHICH SUCH FLEXIBILITY HAS BEEN SHOWN TO BE**
20 **PREMATURE?**

21 **A. Yes. As noted above, Qwest’s benefits from supra-competitive profits from**
22 **special access. The FCC, in its *Pricing Flexibility Order* granted pricing**

¹⁰ Direct testimony of Teresa K. Million, pages 9 and 10.

1 flexibility to Qwest and other ILECs for Special Access in 1999 upon a showing
2 by the ILEC that certain competitive triggers had been met.¹¹ Historically, ILECs
3 have argued (as Qwest does in this Docket) that such pricing flexibility is needed
4 in order to respond to competitors setting retail prices lower than what is
5 permitted under current regulations. Therefore, once Qwest obtained this
6 additional flexibility for pricing special access, it is reasonable to expect to see
7 Qwest's special access rates come down over time, and that the discipline of a
8 competitive market would prevent Qwest from increasing special access rates.
9 However, a review of Qwest's special access rates since that regulatory flexibility
10 was granted, shows that just the opposite has occurred.

11 To make matters even worse, on August 16, 2004, Qwest filed for
12 additional increases to special access rates in its Transmittal No. 206. On
13 average, Qwest is proposing rate increases of 27% with this most recent
14 transmittal. It is obvious that the marketplace is not mature enough to restrain
15 Qwest from acting on its incentives to increase prices. The results of granting
16 Qwest additional pricing flexibility in this instance has resulted in ever increasing
17 rates.

18 **Q. WHAT WAS THE BASIS FOR THE FCC'S GRANTING OF PRICING**
19 **FLEXIBILITY?**

¹¹ FCC 99-206.

1 A. The FCC bases its granting of pricing flexibility on a number of factors, including
2 a requirement that competitors have established a significant market presence,
3 which would preclude the incumbent from exploiting any monopoly power.¹²

4 **Q. HOW DOES THE FCC REQUIREMENT COMPARE TO QWEST'S**
5 **PROPOSED "TEST" FOR COMPETITION IN THIS DOCKET?**

6 A. Qwest's "test" is considerably weaker. Incredibly, Qwest proposes that the only
7 pre-requisite to a zone being considered competitive is a demonstration that
8 functional equivalents or substitutes for Qwest's services are available from at
9 least one competitor. Even more incredibly, Qwest proposes that in order to pass
10 this "test" that competitor may be serving customers *reselling* Qwest services.¹³

11 **Q. WHAT CAN THE COMMISSION LEARN FROM THIS EXAMPLE?**

12 A. The Commission can see from this example, the dangers of implementing pricing
13 flexibility in situations in which the market is not mature enough to discipline the
14 dominant provider. In the example I provide above, the injured parties consist of
15 Qwest's wholesale customers of special access. Qwest special access was not
16 subject to competition, and based on the fact that Qwest continues to seek even
17 higher rates for the service, competition has failed to discipline Qwest's pricing
18 practices. Should Qwest employ the same type of pricing practices in the local
19 market in Arizona, the Commission can expect local rates to increase
20 dramatically, just as they have with special access.

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 A Yes.

¹² *Pricing Flexibility Order*, FCC 99-206 ¶141.

¹³ Shooshan at page 12.

Exhibit TJG 1
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MCI Southwest Division, Austin, Texas, Financial Analyst III and Senior Staff Specialist

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Testimony Profile and Experience

Alabama:

October 18, 2000; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

January 31, 2001; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Exhibit TJG 1
Timothy J. Gates



Arizona:

September 23, 1987; Arizona Corporation Commission Workshop on Special Access Services; Comments on Behalf of MCI.

August 21, 1996; Affidavit in Opposition to USWC Motion for Partial Summary Judgment; No. CV 95-14284, No. CV-96-03355, No. CV-96-03356, (consolidated); On Behalf of MCI.

October 24, 1997; Comments to the Universal Service Fund Working Group; Docket No. R-0000-97-137; On Behalf of MCI.

May 8, 1998; Comments to the Universal Service Fund Working Group; Docket No. R-0000-97-137; On Behalf of MCI.

November 9, 1998; Docket No. T-03175A-97-0251; Application of MCImetro Access Transmission Services, Inc. to Expand Its CCN to Provide IntraLATA Services and to Determine that Its IntraLATA Services are Competitive; Direct Testimony on Behalf of MCI WorldCom, Inc.

September 20, 1999; Docket No. T-00000B-97-238; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc.

January 8, 2001; Docket Nos. T-03654A-00-0882, T-01051B-00-0882; Petition of Level 3 Communications, LLC, for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

California:

August 30, 1996; Application No. 96-08-068; MCI Petition for Arbitration with Pacific Bell; Direct Testimony on Behalf of MCI.

September 10, 1996; Application No. 96-09-012; MCI Petition for Arbitration with GTE California, Inc.; Direct Testimony on Behalf of MCI.

June 5, 2000; Petition of Level 3 Communications for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

Colorado:

December 1, 1986; Investigation and Suspension Docket No. 1720; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

October 26, 1988; Investigation and Suspension Docket No. 1766; Mountain States Telephone and Telegraph Company's Local Calling Access Plan; Direct Testimony on Behalf of MCI.

September 6, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Direct Testimony on Behalf of MCI.

September 17, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Rebuttal Testimony on Behalf of MCI.

September 26, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. 90A-665T (consolidated); Direct Testimony on Behalf of MCI.

Exhibit TJG 1

Timothy J. Gates



October 7, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. Docket No. 90A-665T (consolidated); Rebuttal Testimony on Behalf of MCI.

July 18, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Direct Testimony on Behalf of MCI.

August 15, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Rebuttal Testimony on Behalf of MCI.

March 10, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Supplemental Direct Testimony on Behalf of MCI.

March 26, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Rebuttal Testimony on Behalf of MCI.

May 8, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Affidavit in Response to GTE.

November 4, 1998; Proposed Amendments to the Rules Prescribing IntraLATA Equal Access; Docket No. 98R-426T; Comments to the Commission on Behalf of MCI WorldCom and AT&T Communications of the Mountain States, Inc.

May 13, 1999; Proposed Amendments to the Rules on Local Calling Area Standards; Docket No. 99R-128T; Oral Comments before the Commissioners on Behalf of MCIW.

January 4, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Direct Testimony on Behalf of Level 3.

January 16, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Rebuttal Testimony on Behalf of Level 3.

January 29, 2001; Qwest Corporation, Inc., Plaintiff, v. IP Telephony, Inc., Defendant. District Court, City and County of Denver, State of Colorado; Case No. 99CV8252; Direct Testimony on Behalf of IP Telephony.

Delaware:

February 12, 1993; Diamond State Telephone Company's Application for a Rate Increase; Docket No. 92-47; Direct Testimony on Behalf of MCI.

Florida:

July 1, 1994; Investigation into IntraLATA Presubscription; Docket No. 930330-TP; Direct Testimony on Behalf of MCI.

October 5, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Direct Testimony On Behalf of Level 3.

October 13, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Direct Testimony On Behalf of US LEC.

October 27, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Rebuttal Testimony On Behalf of US LEC.

November 1, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Rebuttal Testimony On Behalf of Level 3.

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Timothy J. Gates



Georgia:

December 6, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

December 20, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Level 3.

Idaho:

November 20, 1987; Case No. U_1150_1; Petition of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

March 17, 1988; Case No. U_1500_177; Investigation of the Universal Local Access Service Tariff; Direct Testimony on Behalf of MCI.

April 26, 1988; Case No. U_1500_177; Investigation of the Universal Local Access Service Tariff; Rebuttal Testimony on Behalf of MCI.

Illinois:

January 16, 1989; Docket No. 83_0142; Appropriate Methodology for Intrastate Access Charges; Rebuttal Testimony Regarding Toll Access Denial on Behalf of MCI.

February 16, 1989; Docket No. 83_0142; Appropriate Methodology for Intrastate Access Charges; Testimony Regarding ITC's Access Charge Proposal on Behalf of MCI.

May 3, 1989; Docket No. 89_0033; Illinois Bell Telephone Company's Rate Restructuring; Direct Testimony on Behalf of MCI.

July 14, 1989; Docket No. 89-0033; Illinois Bell Telephone Company's Rate Restructuring; Rebuttal Testimony on Behalf of MCI.

November 22, 1989; Docket No. 88-0091; IntraMSA Dialing Arrangements; Direct Testimony on Behalf of MCI.

February 9, 1990; Docket No. 88-0091; IntraMSA Dialing Arrangements; Rebuttal Testimony on Behalf of MCI.

November 19, 1990; Docket No. 83-0142; Industry presentation to the Commission re Docket No. 83-0142 and issues for next generic access docket; Comments re the Imputation Trial and Unitary Pricing/Building Blocks on Behalf of MCI.

July 29, 1991; Case No. 90-0425; Presentation to the Industry Regarding MCI's Position on Imputation.

November 18, 1993; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Direct Testimony on Behalf of MCI and LDDS.

January 10, 1994; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Rebuttal Testimony on Behalf of MCI and LDDS.

May 30, 2000; Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

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Timothy J. Gates



July 11, 2000: Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Supplemental Verified Statement on Behalf of Level (3) Communications, LLC.

Indiana:

October 28, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI.

December 16, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding GTE.

April 14, 1989; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding Staff Reports.

June 21, 1989; Cause No. 37905; Intrastate Access Tariffs -- Parity with Federal Rates; Direct Testimony on Behalf of MCI.

June 29, 1989; Cause No. 38560; Reseller Complaint Regarding 1+ IntraLATA Calling; Direct Testimony on Behalf of MCI.

October 25, 1990; Cause No. 39032; MCI Request for IntraLATA Authority; Direct Testimony on Behalf of MCI.

April 4, 1991; Rebuttal Testimony in Cause No. 39032 re MCI's Request for IntraLATA Authority on Behalf of MCI.

Iowa:

September 1, 1988; Docket No. RPU 88_6; IntraLATA Competition in Iowa; Direct Testimony on Behalf of MCI.

September 20, 1988; Docket No. RPU_88_1; Regarding the Access Charges of Northwestern Bell Telephone Company; Direct Testimony on Behalf of MCI.

September 25, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 3, 1991; Docket No. NOI-90-1; Presentation on Imputation of Access Charges and the Other Costs of Providing Toll Services; On Behalf of MCI.

November 5, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

December 23, 1991; Docket No. RPU-91-4; Investigation of the Earnings of US WEST Communications, Inc.; Supplemental Testimony on Behalf of MCI.

January 10, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

January 20, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Surrebuttal Testimony on Behalf of MCI.

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Timothy J. Gates



June 8, 1999; Docket NOI-99-1; Universal Service Workshop; Participated on numerous panels during two day workshop; Comments on Behalf of MCIW.

October 27, 1999; Docket NOI-99-1; Universal Service Workshop; Responded to questions posed by the Staff of the Board during one day workshop; Comments on Behalf of MCIW and AT&T.

Kansas:

June 10, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Direct Testimony on Behalf of MCI.

September 16, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Rebuttal Testimony on Behalf of MCI.

Kentucky:

May 20, 1993; Administrative Case No. 323, Phase I; An Inquiry into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality; Direct Testimony on Behalf of MCI.

December 21, 2000; Case No. 2000-404; Petition of Level 3 Communications, LLC for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

January 12, 2001; Case No. 2000-477; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

Louisiana:

December 28, 2000; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

January 5, 2001; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

Maryland:

November 12, 1993; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Direct Testimony on Behalf of MCI.

January 14, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

May 19, 1994; Case No. 8585; Re Bell Atlantic Maryland, Inc.'s Transmittal No. 878; Testimony on Behalf of MCI.

June 2, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

Massachusetts:

April 22, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Direct Testimony on Behalf of MCI.

May 10, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Rebuttal Testimony on Behalf of MCI.

Exhibit TJG 1

Timothy J. Gates



Michigan:

September 29, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Direct Testimony on Behalf of MCI.

November 30, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Rebuttal Testimony on Behalf of MCI.

June 30, 1989; Case No. U-8987; Michigan Bell Telephone Company Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

July 31, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

November 17, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

July 22, 1993; Case No. U-10138 (Reopener); MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

February 16, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Direct Testimony on Behalf of AT&T. (Adopted Testimony of Michael Starkey)

May 11, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Rebuttal Testimony on Behalf of AT&T.

June 8, 2000; Case No. U-12460; Petition of Level 3 Communications for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 27, 2000; Case No. U-12528; In the Matter of the Implementation of the Local Calling Area Provisions of the MTA; Rebuttal Testimony on Behalf of Focal Communications, Inc..

Minnesota:

January 30, 1987; Docket No. P_421/CI_86_88; Summary Investigation into Alternative Methods for Recovery of Non-traffic Sensitive Costs; Comments to the Commission on Behalf of MCI.

September 7, 1993; Docket No. P-999/CI-85-582, P-999/CI-87-697 and P-999/CI-87-695, In the Matter of an Investigation into IntraLATA Equal Access and Presubscription; Comments of MCI on the Report of the Equal Access and Presubscription Study Committee on Behalf of MCI.

September 20, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Direct Testimony on Behalf of MCI.

September 30, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Rebuttal Testimony on Behalf of MCI.

September 14-16, 1999; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc. re OSS Issues.

September 28, 1999; Docket No. P-999/R-97-609; Universal Service Group; Comments on Behalf of MCI WorldCom, Inc. and AT&T Communications.

Exhibit TJG 1
Timothy J. Gates



Mississippi:

February 2, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

February 16, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Montana:

May 1, 1987; Docket No. 86.12.67; Rate Case of AT&T Communications of the Mountain States, Inc.; Direct Testimony on Behalf of MCI.

September 12, 1988; Docket No. 88.1.2; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

May 12, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

June 1, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Amended Rebuttal Testimony on Behalf of MCI.

Nebraska:

November 6, 1986; Application No. C_627; Nebraska Telephone Association Access Charge Proceeding; Direct Testimony on Behalf of MCI.

March 31, 1988; Application No. C_749; Application of United Telephone Long Distance Company of the Midwest for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

New Hampshire:

April 30, 1993; Docket DE 93-003; Investigation into New England Telephone's Proposal to Implement Seven Digit Dialing for Intrastate Toll Calls; Direct Testimony on Behalf of MCI.

January 12, 2001; Docket No. DT 00-223; Investigation Into Whether Certain Calls are Local; Direct Testimony on Behalf of BayRing Communications.

New Jersey:

September 15, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

October 1, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Reply Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

April 7, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Direct Testimony on Behalf of MCI.

Exhibit TJG 1

Timothy J. Gates



April 25, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Rebuttal Testimony on Behalf of MCI.

New Mexico:

September 28, 1987; Docket No. 87_61_TC; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

August 30, 1996; Docket No. 95-572-TC; Petition of AT&T for IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

New York:

April 30, 1992; Case 28425; Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

June 8, 1992; Case 28425; Reply Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

North Carolina:

August 4, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 18, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

October 18, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions or North Carolina, LP for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

December 8, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions or North Carolina, LP for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

North Dakota:

June 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Direct Testimony on Behalf of MCI.

October 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Rebuttal Testimony on Behalf of MCI.

Exhibit TJG 1

Timothy J. Gates



Oklahoma:

April 2, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Direct Testimony on Behalf of MCI.

June 22, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Rebuttal Testimony on Behalf of MCI.

Oregon:

October 27, 1983; Docket No. UT 9; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

April 23, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

May 7, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Rebuttal Testimony on Behalf of the Public Utility Commissioner of Oregon.

October 31, 1986; Docket No. AR 154; Administrative Rules Relating to the Universal Service Protection Plan; Rebuttal Testimony on Behalf of MCI.

September 6, 1996; Docket ARB3/ARB6; Petition of MCI for Arbitration with U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Direct Testimony on Behalf of MCI.

November 5, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Rebuttal Testimony on Behalf of MCI.

Pennsylvania:

December 9, 1994; Docket No. I-00940034; Investigation Into IntraLATA Interconnection Arrangements (Presubscription); Direct Testimony on Behalf of MCI.

Rhode Island:

April 30, 1993; Docket No. 2089; Dialing Pattern Proposal Made by the New England Telephone Company; Direct Testimony on Behalf of MCI.

South Carolina:

Oct. ??, 2000; Docket No. 2000-0446-C; US LEC of South Carolina Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of US LEC.

November 22, 2000; Docket No. 2000-516-C; Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

December 14, 2000; Docket No. 2000-516-C; Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

South Dakota:

Exhibit TJG 1
Timothy J. Gates



November 11, 1987; Docket No. F_3652_12; Application of Northwestern Bell Telephone Company to Introduce Its Contract Toll Plan; Direct Testimony on Behalf of MCI.

Texas:

June 5, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

June 12, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

Tennessee:

January 31, 2001; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

February 7, 2001; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Utah:

November 16, 1987; Case No. 87_049_05; Petition of the Mountain State Telephone and Telegraph Company for Exemption from Regulation of Various Transport Services; Direct Testimony on Behalf of MCI.

July 7, 1988; Case No. 83_999_11; Investigation of Access Charges for Intrastate InterLATA and IntraLATA Telephone Services; Direct Testimony on Behalf of MCI.

November 8, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Direct Testimony on Behalf of MCI.

November 22, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Rebuttal Testimony on Behalf of MCI.

September 3, 1997; Docket No. 97-049-08; USWC Rate Case; Surrebuttal Testimony on Behalf of MCI.

September 29, 1997; Docket No. 97-049-08; USWC Rate Case; Revised Direct Testimony on Behalf of MCI.

February 2, 2001; Docket No. 00-999-05; In the Matter of the Investigation of Inter-Carrier Compensation for Exchanged ESP Traffic; Direct Testimony on Behalf of Level 3 Communications, LLP.

Washington:

Exhibit TJG 1

Timothy J. Gates



September 27, 1988; Docket No. U_88_2052_P; Petition of Pacific Northwest Bell Telephone Company for Classification of Services as Competitive; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. UT-960338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Direct Testimony on Behalf of MCI.

November 20, 1996; Docket No. UT-960338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Rebuttal Testimony on Behalf of MCI.

January 13, 1998; Docket No. UT-970325; Rulemaking Workshop re Access Charge Reform and the Cost of Universal Service; Comments and Presentation on Behalf of MCI.

West Virginia:

October 11, 1994; Case No. 94-0725-T-PC; Bell Atlantic - West Virginia Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

June 18, 1998; Case No. 97-1338-T-PC; Petition of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

Wisconsin:

October 31, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

November 14, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Rebuttal Testimony on Behalf of MCI.

December 12, 1988; Docket No. 05_TI_116; In the Matter of Provision of Operator Services; Rebuttal Testimony on Behalf of MCI.

March 6, 1989; Docket No. 6720_TI_102; Review of Financial Data Filed by Wisconsin Bell, Inc.; Direct Testimony on Behalf of MCI.

May 1, 1989; Docket No. 05_NC_100; Amendment of MCI's CCN for Authority to Provide IntraLATA Dedicated Access Services; Direct Testimony on Behalf of MCI.

May 11, 1989; Docket No. 6720_TR_103; Investigation Into the Financial Data and Regulation of Wisconsin Bell, Inc.; Rebuttal Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Disconnection of Local and Toll Services for Nonpayment -- Part A; Direct Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Examination of Industry Wide Billing and Collection Practices -- Part B; Direct Testimony on Behalf of MCI.

July 12, 1989; Docket No. 05-TI-112; Rebuttal Testimony in Parts A and B on Behalf of MCI.

October 9, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Direct Testimony on Behalf of MCI.

November 17, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Rebuttal Testimony on Behalf of MCI.

Exhibit TJG 1

Timothy J. Gates



December 1, 1989; Docket No. 05-TR-102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

April 16, 1990; Docket No. 6720-TR-104; Wisconsin Bell Rate Case; Direct Testimony on Behalf of MCI.

October 1, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Direct Testimony on Behalf of MCI.

October 15, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Rebuttal Testimony on Behalf of MCI.

November 15, 1990; Docket No. 05-TR-103; Investigation of Intrastate Access Costs and Intrastate Access Charges; Direct Testimony on Behalf of MCI.

April 3, 1992; Docket No. 05-NC-102; Petition of MCI for IntraLATA 10XXX 1+ Authority; Direct Testimony on Behalf of MCI.

Wyoming:

June 17, 1987; Docket No. 9746 Sub 1; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

May 19, 1997; Docket No. 72000-TC-97-99; In the Matter of Compliance with Federal Regulations of Payphones; Oral Testimony on Behalf of MCI.

Comments Submitted to the Federal Communications Commission and/or the Department of Justice

March 6, 1991; Ameritech Transmittal No. 518; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates for OPTINET 64 Kbps Service.

April 17, 1991; Ameritech Transmittal No. 526; Petition to Suspend and Investigate on Behalf of MCI re Proposed Flexible ANI Service.

August 30, 1991; Ameritech Transmittal No. 555; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 30, 1991; Ameritech Transmittal No. 562; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates and Possible MFJ Violations Associated with Ameritech's OPTINET Reconfiguration Service (AORS).

October 15, 1991; CC Docket No. 91-215; Opposition to Direct Cases of Ameritech and United (Ameritech Transmittal No. 518; United Transmittal No. 273) on Behalf of MCI re the introduction of 64 Kbps Special Access Service.

November 27, 1991; Ameritech Transmittal No. 578; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 4, 1992; Ameritech Transmittal No. 650; Petition to Suspend and Investigate on Behalf of MCI re Ameritech 64 Clear Channel Capability Service.

February 16, 1995; Presentation to FCC Staff on the Status of Intrastate Competition on Behalf of MCI.

November 9, 1999; Comments to FCC Staff of Common Carrier Bureau on the Status of OSS Testing in Arizona on Behalf of MCI WorldCom, Inc.

Exhibit TJG 1

Timothy J. Gates



November 9, 1999; Comments to the Department of Justice (Task Force on Telecommunications) on the Status of OSS Testing in Arizona and the USWC Collaborative on Behalf of MCI WorldCom, Inc.

Presentations

April 8, 1987; Minnesota; Senate File 677; Proposed Deregulation Legislation; Comments before the House Committee on Telecommunications.

October 30, 1989; Michigan; Presentation Before the Michigan House and Senate Staff Working Group on Telecommunications; "A First Look at Nebraska, Incentive Rates and Price Caps," Comments on Behalf of MCI.

May 16, 1990; Wisconsin; Comments Before the Wisconsin Assembly Utilities Committee Regarding the Wisconsin Bell Plan for Flexible Regulation, on Behalf of MCI.

March 20, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Committee re SB 124 on behalf of MCI.

May 15, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Commission and the House Public Utilities Committee re MCI's Building Blocks Proposal and SB 124/HB 4343.

March 8, 2000; Illinois; Presentation to the Environment & Energy Senate Committee re Emerging Technologies and Their Impact on Public Policy, on Behalf of MCI WorldCom, Inc.

May 17, 1989; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 15-18, 1989; Panel Presentation -- Interexchange Service Pricing Practices Under Price Cap Regulation; Comments on Behalf of MCI.

July 24, 1989; National Association of Regulatory Utility Commissioners -- Summer Committee Meeting, San Francisco, California. Panel Presentation -- Specific IntraLATA Market Concerns of Interexchange Carriers; Comments on Behalf of MCI.

May 16, 1990; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 14-18, 1990; Presentation on Alternative Forms of Regulation.

October 29, 1990; Illinois Telecommunications Sunset Review Forum; Two Panel Presentations: Discussion of the Illinois Commerce Commission's Decision in Docket No. 88-0091 for the Technology Working Group; and, Discussion of the Treatment of Competitive Services for the Rate of Return Regulation Working Group; Comments on Behalf of MCI.

May 16, 1991; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation Course; May 13-16, 1991; Participated in IntraLATA Toll Competition Debate on Behalf of MCI.

November 19, 1991; TeleStrategies Conference -- "Local Exchange Competition: The \$70 Billion Opportunity." Presentation as part of a panel on "IntraLATA 1+ Presubscription" on Behalf of MCI.

July 9, 1992; North Dakota Association of Telephone Cooperatives Summer Conference, July 8-10, 1992. Panel presentations on "Equal Access in North Dakota: Implementation of PSC Mandate" and "Open Network Access in North Dakota" on Behalf of MCI.

December 2-3, 1992; TeleStrategies Conference -- "IntraLATA Toll Competition -- A Multi-Billion Dollar Market Opportunity." Presentations on the interexchange carriers' position on intraLATA dialing parity and presubscription and on technical considerations on behalf of MCI.

March 14-17, 1993; NARUC Introductory Regulatory Training Program; Panel Presentation on Competition in Telecommunications on Behalf of MCI.

Exhibit TJG 1
Timothy J. Gates



May 13-14, 1993; TeleStrategies Conference -- "IntraLATA Toll Competition -- Gaining the Competitive Edge"; Presentation on Carriers and IntraLATA Toll Competition on Behalf of MCI.

May 23-26, 1994; The 12th Annual National Telecommunications Forecasting Conference; Represented IXC's in Special Town Meeting Segment Regarding the Convergence of CATV and Telecommunications and other Local Competition Issues.

March 14-15, 1995; "The LEC-IXC Conference"; Sponsored by Telecommunications Reports and Telco Competition Report; Panel on Redefining the IntraLATA Service Market -- Toll Competition, Extended Area Calling and Local Resale.

August 28-30, 1995; "Phone+ Supershow '95"; Playing Fair: An Update on IntraLATA Equal Access; Panel Presentation.

August 29, 1995; "TDS Annual Regulatory Meeting"; Panel Presentation on Local Competition Issues.

December 13-14, 1995; "NECA/Century Access Conference"; Panel Presentation on Local Exchange Competition.

October 23, 1997; "Interpreting the FCC Rules of 1997"; The Annenberg School for Communication at the University of Southern California; Panel Presentation on Universal Service and Access Reform.

Exhibit TJG 2

Bells Mount Two-Way Assault On Local Market

New-Client Perks Pressure
Rivals, Who Also Face Rise
In Rates for Using Network

By ANNE MARIE SQUEO
Staff Reporter of THE WALL STREET JOURNAL
August 3, 2004; Page A1

(See Corrections & Amplifications item below.)

Taking advantage of their continuing control over phone lines into homes, the three top Bell telephone companies are ramping up discounts to attract customers while seeking to ratchet up the rates they charge rivals using their networks.

The upshot: Eight years after Congress mandated more open competition in the local phone business, rivals new and old say they are being financially squeezed and are urging regulators to curb what they say is anticompetitive behavior by the Bells.

Already, the Bells' chief rival, AT&T Corp., has decided to stop competing for residential customers, saying it can't make any money doing so. At the same time, dozens of smaller phone companies, which flooded into the market after the Telecommunications Act of 1996, are scaling back marketing plans and consulting with bankruptcy attorneys.

Fueling the turmoil is a regulatory environment that has shifted in the Bells' favor. A March decision by a federal appeals court threw out existing rules about how the regional phone companies must make their local phone networks available to competition. To clear up the resulting uncertainty, the Federal Communications Commission is writing new rules that include an automatic 15% increase in wholesale rates. The Bells are individually soliciting state regulators for even-higher rates.



MIXED SIGNALS

See some of the incentives regional Bells are offering that are sometimes below their own wholesale costs.

In the meantime, the bigger Bells -- SBC Communications Inc., BellSouth Corp. and Verizon Communications Inc. -- are trying to win consumers by slashing prices, to levels even they admit don't cover their costs. In

Michigan, Florida, California and elsewhere, the big Bells are offering a variety of incentives, including introductory rates of \$7.95 a month for unlimited local phone service or \$100 checks to switch phone companies.

Exhibit TJG 2

The tactic, aimed mainly at recapturing former customers, has had some success. A recent study by market-research company TNS Telecoms, found that for the first time in five years, the Bell companies increased their share of the home-phone market slightly during the second quarter of 2004, in large part because of special discounts.

The retail promotions are happening at the same time that SBC, Verizon and others are pushing state regulators to raise the rates they can charge rivals to access their networks. The Bells contend that current price caps on those rates don't cover their costs. And as for the discounted rates, industry executives say many states already set their retail phone caps below cost, a vestige of government efforts to ensure that every American has phone service. So losing a few more dollars in the short term is worth their while if they sign up a customer who ends up taking other, more-expensive services such as high-speed Internet.

Rivals are crying foul, and some regulators agree. "The clear reading of the 1996 Telecom Act said this country should set up a competitive environment for [wired] local phone service," said Robert Nelson, a member of the Michigan Public Service Commission and chairman of the telecommunications committee of the National Association of Regulatory Utility Commissioners. "Those are still reasonable goals to have since that's still the dominant form of phone usage in the country today."

The 1996 Telecom Act allowed the Bells to offer long-distance phone service for the first time if they opened their local networks to competition through a regimented process reviewed by the FCC and the Justice Department. That process officially ended late last year, giving the Bells clearance to bundle local and long-distance phone service. The law envisioned a world where numerous companies, including cable companies and other Bells, would compete for business.

The Bells contend that the law worked just as envisioned, creating an increasingly competitive marketplace. Cable companies are rolling out telephone service, and Internet phone technology has made great advances in recent years. Customers are cutting their phone cord and going wireless, though many wireless companies still offer subpar service in certain areas of the country. (The nation's Bell phone companies own two of the six largest cellular-phone companies and are in the process of buying No. 3 in the market, AT&T Wireless. At that time, they'll control more than half of all U.S. cellular phone users.)

Control of the phone network is the Bells' most powerful asset, awarded to the companies after the 1980s breakup of AT&T. They now have extensive records about customer defections and collect substantial fees for leasing their network to rival companies. These latest promotional packages, targeted specifically to customers who have left, are designed to make money down the road when the discounts run out.

Exhibit TJG 2

In Florida, BellSouth is offering \$100 checks, along with \$25 gift cards, and waiving its \$40 line-connection fee for those willing to return to its customer ranks. In New York, Verizon is pitching \$75 credits. SBC is offering \$75 gift cards in California and Nevada while pitching steep discounts for unlimited local-phone service in some Midwest states.

Some of these offers amount to free phone service for a few months, rivals contend. In Michigan, for example, SBC is offering residential customers a five-month \$7.95 special for unlimited local calling that includes caller identification and call waiting, if they'll return. In the past few weeks, the company has added 30 minutes of free long-distance service to the promotion. After the promotion ends, the price would jump to \$17.95, which is still 36% below the \$28 to which SBC is asking Michigan regulators to boost its wholesale rate.

Win-backs, as they're known in the industry, aren't new and aren't necessarily illegal. But federal antitrust laws, intended to protect competition, prohibit what's known as "predatory pricing," or situations where a dominant company in an industry temporarily lowers its prices significantly to drive off competitors.

"You have to ask yourself: Why would SBC rather get \$8 from a residential customer instead of \$14 from us if their end goal isn't to drive us out of business," says Bruce Yuille, co-owner of QuickConnect U.S.A., a small telephone company with about 11,000 customers in Michigan. With rising pressure on their profits, QuickConnect executives have consulted a bankruptcy lawyer.

SBC Chief Operating Officer Randall Stephenson has the answer: "If I keep this customer [with promotions], I'm going to get \$28 in the future and that's a lot better than \$14." The promotion in Michigan ends after a year, and rates jump to \$28 a month for the same plan, he says. (That price isn't disclosed on the flier, but a company spokesman said it is told to consumers who call to sign up.) Mr. Stephenson noted SBC lost 165,000 phone lines during the second quarter to rivals leasing access to its network despite the discounts it is offering in Illinois, Ohio and other states in its territory.

Mr. Nelson, the Michigan regulator, says the state is looking at the questions raised by the special promotion. The Michigan legislature separately is working on a law that would end the telecom industry's antitrust exemption in the state. In Illinois, the state public-service commission in June opened a case looking into SBC's retail business rates and the difference with wholesale ones. "We want to protect the integrity of the competitive market structure so that the wholesale and retail rates don't unduly benefit one party over the other," said Beth Bosch, a spokesman for the Illinois Commerce Commission.

In Florida, state regulators are reviewing a complaint by a rival that BellSouth's promotional inducements might be violating state antitrust laws. In the case before the Florida Public Service Commission, smaller rival Supra

Exhibit TJG 2

Telecommunications & Information Systems Inc. accuses BellSouth of just such anticompetitive behavior by offering unlimited local calling for \$26.95 including privacy directory service, three-way calling and unlimited *69 and other services that traditionally have cost extra. In addition, BellSouth is providing customers that accept this offer with a \$100 check and \$25 gift card, as well as waiving the \$41 line-connection charge.





"Given these recent promotions, it is apparent that either (a) BellSouth's arguments regarding [wholesale pricing] being below cost are untrue, or (b) BellSouth's PreferredPack Plan is also below cost and is anticompetitive," wrote Supra, a Miami-based company with more than 250,000 customers, in its April petition to state regulators. The case is pending.

BellSouth executives dismiss these allegations. "A price squeeze can't exist because [rivals] have other options," says John Ruscilli, senior director of regulatory affairs for BellSouth, contending that competitive phone companies by law are allowed to resell what the Bell is offering at a discounted rate that varies state to state. State regulators, however, said that's easier said than done because it involves costly changes to back-office operations and lasts only as long as the promotion.

In late June, the U.S. Court of Appeals for the Eleventh Circuit in Atlanta allowed antitrust allegations to proceed against BellSouth by Covad Communications Co., which sells high-speed Internet service. While the court threw out other claims against BellSouth, it determined Covad had provided "sufficient" evidence to allow a charge of price-squeezing to continue. In particular, Covad, based in San Jose, Calif., alleges BellSouth's prices for its Internet connections and access service are "set so low" relative to its wholesale rates "that Covad cannot meet BellSouth's wholesale or retail prices and still make a reasonable return on its investment."

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	STATE/BELL	RETAIL OFFERING BY BELL	AVERAGE WHOLESALE RATE*
	Illinois SBC	\$11.95 unlimited local calling for first five months including some services like call waiting.	\$13.67
	Florida BellSouth	\$26.95 for unlimited local plus \$100 check, \$25 gift card, free connection and some services.	\$13.95
	New York Verizon	\$75 credit toward phone bill.	\$11.49
	Michigan SBC	\$7.95 unlimited local calling for first five months, including some services.	\$10.31

*Average monthly wholesale cost for connecting to the last mile of phone line in given state, not including other services

Exhibit TJG 2

Corrections & Amplifications:

The nation's Bell phone companies own two of the six largest cellular-phone companies and are in the process of buying No. 3 in the market, AT&T Wireless. At that time, they will control more than half of all U.S. cellular-phone users. This article incorrectly said they own most of the nation's cellular companies.